

committee's website at http://leg.mt.gov/css/committees/interim/2003_2004/energy_telecom/default.asp.

CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES COMMITTEE

Committee to Meet in August...The committee is scheduled to meet for the first time this interim on Aug. 22, beginning at 8 a.m. in Room 102 of the Capitol. The committee will elect officers and set priorities for the interim. Gail Gray, director of the Department of Public Health and Human Services (DPHHS), will discuss agency activities with the committee. The committee will determine its level of involvement with the following:

- the monitoring of DPHHS programs and review of studies such as the state health planning for the uninsured and the redesign of Medicaid and other health care programs;
- the initiative to coordinate services for children;
- the creation of the new Division of Child and Adult Health Resources at DPPHS;
- the impact of budget decisions made by the 2003 Legislature; and
- the use of the new financial assistance from the federal government.

Interim Studies...The Committee will also review study plans for the two interim studies assigned to the committee by the Legislative Council:

- the HJR 3 study of representation for indigent parents involved in the child abuse and neglect system; and
- the SJR 11 study of drug and alcohol abuse prevention, early intervention, treatment, and alternatives to incarceration.

Contact Staff for More Information...If you would like to be on the committee's mailing list or want more information about the committee, please contact Susan Byorth Fox at (406) 444-3597 or sfox@mt.gov. Additional information about the committee is also available on the Internet by going to www.leg.mt.gov and following the interim committee links.

EDUCATION AND LOCAL GOVERNMENT

Committee to Organize in August...The Education and Local Government Committee will begin its interim work on Thursday, Aug. 21 in Helena. Sen. Bill Glaser, senior senator, will convene the meeting at 9:30 a.m. in Room 137 of the Capitol. The committee will elect officers, hear from local government and education officials on key issues, and adopt a work plan and meeting schedule for the interim.

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ENERGY AND TELECOMMUNICATIONS COMMITTEE

September Meeting Date Changed for PSC Natural Gas Forum...The Energy and Telecommunications Committee will meet in Helena on Sept. 16 in Room 102 of the Capitol. (The meeting was originally scheduled for Sept. 17-18.) Noteworthy topics on the agenda include an update on NorthWestern Corporation's financial status and a discussion of options related to the default supply of electricity and natural gas.

The Montana Public Service Commission will host a natural gas forum in Helena at the Great Northern Hotel (835 Great Northern Blvd) on Sept. 17. The forum will bring together national and Montana experts to discuss natural gas wholesale markets, to describe how natural gas rates are set, and to identify strategies for addressing the current situation in which high prices have led to significant rate increases for natural gas consumers. Although the final agenda has not been set, national speakers will include Stephen Harvey, assistant director of market monitoring with the Federal Energy Regulatory Commission; Ken Costello, economist with the National Regulatory Research Institute; and Ron Edelstein, with the Gas Technology Institute. Members of the Energy and Telecommunications Committee will participate in the forum and all legislators are invited to attend. Information about the natural gas forum will be posted on the PSC's website at <http://www.psc.mt.gov>, or contact the Montana Public Service Commission at (406) 444-6199.

Committee Monitoring Current Events and Seeking Solutions...The committee is monitoring the status of Montana's energy supply situation, including electricity and natural gas rates and potential impacts resulting from NorthWestern Corporation's significant debt, which recently amounted to \$2.2 billion. Committee members have asked staff to look at policy options that could mitigate impacts on Montana's natural gas and electricity customers.

Want to Know More?...Contact Mary Vandenbosch at (406) 444-5367 or mvandenbosch@mt.gov for more information about the committee or to be added to the mailing list. Agendas, memos, links, and a draft work plan are available on the

Committee to Study Subdivision and Platting Act...The Legislative Council assigned HJR 37 to the committee for study this interim. The resolution requests the committee to review the Subdivision and Platting Act and to make recommendations for legislation to revise the act so that it is clear, concise, and logically organized. A draft study plan will be presented to the committee for its approval at its second meeting.

Go to the Web for More Information...Further information on the meeting will soon be available on the committee's website at www.leg.mt.gov. Just follow the links to "Interim Committees." If you wish to be placed on the interested persons list for the committee, please contact Connie Erickson at (406) 444-3064 or cerickson@mt.gov.

ENVIRONMENTAL QUALITY COUNCIL

Council Update...The Environmental Quality Council (EQC) held its first meeting of the interim on June 16 and 17. Sen. Walter McNutt was elected chairman and Rep. Paul Clark was elected vice chair of the EQC for this interim.

The EQC established an agency oversight subcommittee and an energy working group. Reps. Christopher Harris and Debbie Barrett were appointed chair and vice chair, respectively, of the oversight subcommittee. Sen. Dan McGee and Rep. Norma Bixby were appointed chair and vice chair, respectively, of the energy working group. (See the July issue of **THE INTERIM** for prior coverage of the June meeting.)

The EQC is also interested in doing some work on regulatory takings, the adequacy of metal mine bonding, and alternative energy technologies. Staff will be working this summer with the leadership of the EQC and its subcommittees to develop more detailed work plans for presentation at the next EQC meeting.

October Meeting on Tap...The next EQC meeting is scheduled for Wednesday and Thursday, Oct. 8 and 9 in Room 102 of the state Capitol.

Meeting agendas and minutes, staff reports, draft proposals, and other information about the EQC are available at <http://www.leg.mt.gov/css/lepo>, by calling (406) 444-3742, or by emailing mtheisen@mt.gov.

STATE ADMINISTRATION AND VETERANS' AFFAIRS COMMITTEE

The State Administration and Veterans' Affairs Interim Committee is scheduled to meet on Friday, Sept. 26 at the state Capitol in Helena. The details of the agenda are yet to be worked out, but in general, the committee will review its statutory duties and meet with representatives of the state agencies for which the committee has monitoring responsibilities. Those agencies include the Office of the Secretary of State, the Office of the Commissioner of Political Practices, the Department of Administration and its

subdivisions, the Department of Military Affairs and its subdivisions, and the Board of Veterans' Affairs. Additional details of the September meeting, as soon as they are available, will be posted to the committee's website at http://www.leg.mt.gov/css/committees/interim/2003_2004/st_admin_vet_affairs/default.asp. You can also contact Dave Bohyer by phone at (406) 444-3064 or by e-mail at dbohyer@mt.gov.

LEGISLATIVE COUNCIL SJR 32 SUBCOMMITTEE

The Legislative Council has assumed responsibility for conducting the SJR 32 study of liability insurance for health care facilities and providers through a subcommittee of the Legislative Council. The SJR 32 Subcommittee will meet at the state Capitol in Helena on Monday, Sept. 22. The subcommittee will review, revise, and adopt a draft study plan that identifies major policy issues, proposed staff projects, and meeting dates. Once adopted, the study plan will become the blueprint for providing structure to the subcommittee's work and will serve as the guide for keeping members and interested parties focused and on schedule. Additional details of the Sept. 22 meeting of the subcommittee, as soon as they are available, will be posted to the Legislative Council's website at <http://www.leg.mt.gov>; just follow the "Committees" link to "Administration." You can also contact Dave Bohyer by phone at 406-444-3064 or by e-mail at dbohyer@mt.gov.

REVENUE AND TRANSPORTATION COMMITTEE

Committee Reschedules Meeting (for a good reason)...The Revenue and Transportation Committee has rescheduled its Oct. 3 meeting to Oct. 2. The reason for the change is to allow committee members to attend a public forum on "State Revenue Generation: Thinking New Thoughts," sponsored by the Wheeler Center at MSU, Bozeman. The forum will present ideas on "how states can and should structure their revenue (and spending) policies." The forum begins with a keynote address at 7:30 p.m. on Oct. 2, with a full day scheduled for Oct. 3. Details about the forum can be found at <http://www.montana.edu/wheeler/> and following the links.

Specifics about the Oct. 2 committee meeting will appear in the September issue of **THE INTERIM**.

Tax Reform Study Committee to Meet in September...Senate Bill No. 461 was enacted to mitigate the effects of the most recent property tax reappraisal of residential and commercial property conducted by the Department of Revenue. The legislation also created two study committees (a property reappraisal study committee and a tax reform study committee) that were assigned to the department. Two members of Revenue and Transportation Committee, Sen. Jon Ellingson and Rep. Eileen Carney, are on the Tax Reform Study Committee. That committee is scheduled to meet Sept. 12 at 8:30 a.m.

in the Montana Association of Counties conference room (2711 Airport Rd., Helena). For more information about the Tax Reform Study Committee, contact the Department of Revenue at (406) 444-6950.

The Loop is Always Open...For more information about the Revenue and Transportation Committee, its work plan, or future agendas, please visit the website (<http://www.leg.mt.gov> and follow the "Committees" links), or contact Jeff Martin at (406) 444-3064 or via e-mail at jmartin@mt.gov or Leanne Kurtz at (406) 444-3064 or via e-mail at lekurtz@mt.gov.

STATE-TRIBAL RELATIONS COMMITTEE

Committee Begins Work in August...The State-Tribal Relations Committee will meet on Wednesday, Aug. 27, to organize for the interim. Sen. John Bohlinger, senior senator, will convene the meeting at 9:15 a.m. in Room 137 of the Capitol. The committee will elect officers and adopt a work plan and meeting schedule for the interim.

Committee to Study Indian Dropout Rate...The Legislative Council assigned HJR 8 to the committee for study during the interim. The resolution requests the committee to prepare a comprehensive state plan for addressing the problem of American Indian students who drop out of school prior to graduation. The committee will work with the Office of Public Instruction and the Interagency Coordinating Council on the study. A draft study plan will be presented to the committee for its approval.

Info on the Web...Further information on the meeting will soon be available on the committee's website at www.leg.mt.gov. Just follow the links to "Interim Committees." If you wish to be placed on the interested persons list, please contact Connie Erickson or Dawn Field at (406) 444-3064 or by e-mail at cerickson@mt.gov or dfield@mt.gov.

SB 304 COMMITTEE ON STATE COMPENSATION INSURANCE FUND

The committee created by SB 304 to study the role of the State Compensation Insurance Fund (Montana State Fund) met July 8 in Helena to plan a "getting up to speed" educational agenda for its Sept. 23-24 meeting and elected Sen. Royal Johnson as its presiding officer.

The committee includes four members appointed by the governor, one member appointed by the state auditor, and four members appointed by legislative leadership. The governor's appointees are: Jacqueline Lenmark, representing workers' compensation private insurers; George Wood, representing self-insured employers; Jack Morgenstern, a member of the State Fund Board and an employer insured by the

State Fund; and Tom Beck, the governor's chief policy advisor. Angela Huschka represents the State Auditor's office. Other legislators on the committee include: Sen. Bea McCarthy, Rep. Bob Bergren, and Rep. Dave Lewis.

SB 304, introduced by Sen. Johnson in the 2003 session, directs the committee to examine:

- the role of the Montana State Fund;
- the possible sale of the assets and liabilities of the old fund (assets and liabilities for injuries resulting from accidents that occurred before July 1, 1990) or the new fund (assets and liabilities for injuries resulting from accidents that occurred on or after July 1, 1990); and
- the creation of an assigned risk pool.

The educational components of the Sept. 23-24 meeting will include:

- an overview of the Montana State Fund;
- the procedures the State Fund uses to set rates, with particular attention to state agency workers' compensation rates and the State Fund's tiered pricing methods;
- the factors that may lead to higher rates;
- the methods for valuing the State Fund in terms of its financial condition and the roles of surplus and reserves; and
- the competitive advantages or disadvantages the State Fund has in relation to private insurers and as a public agency.

The State Fund is responsible for expenses and support of the study committee. For more information or to be added to the mailing list for committee meetings, contact Kathy Gowen at (406) 444-7759. Information about the committee's activities will be posted to www.SB304.com, which will be available by mid-August.

INTERIM COMMITTEE ASSIGNMENTS UPDATE

The June issue of *THE INTERIM* listed legislative appointments to interim committees. At that time, the Senate appointments to the Property Reappraisal Study Committee and the Tax Reform Study Committee¹ were not available. In addition, the legislative appointments to the Capitol Complex Advisory Council were inadvertently omitted. The appointments to those committees are listed below.

CAPITOL COMPLEX ADVISORY COUNCIL

Rep. Jeff Laszloffy
Sen. Mike Cooney

Rep. Larry Jent
Sen. Duane Grimes

¹The Property Tax Reappraisal Study Committee and the Tax Reform Study Committee are attached to the Department of Revenue.

PROPERTY TAX REAPPRAISAL STUDY

Rep. Rod Bitney
Rep. Larry Cyr
Sen. Greg Barkus
Sen. Bob Story

Rep. Gary Branae
Rep. Ron Devlin
Sen. Emily Stonington
Sen. Ken Toole

TAX REFORM STUDY COMMITTEE (including governor's appointments)

Rep. Jill Cohenour
Rep. Bob Lake
Sen. Keith Bales
Sen. Dan Harrington
Jerry Driscoll
Myles Watts

Rep. Eileen Carney
Rep. Jim Peterson
Sen. Jon Ellingson
Sen. Gary Perry
Ken Morrison
Mary Whittinghill

TIME AND TIDE

Analog or Digital, It's all the Same... Do not be misled by the dearth of coverage in this issue of **THE INTERIM**. Interim activity will soon accelerate and participants in the biennial ritual will soon be agonizing over deadlines and missed opportunities. This issue resurrects a feature begun last interim to help you gage the passage of time and prepare for impending chaos by tracking the number of days remaining in the 2003-04 interim and the number of days until the general election and the start of the 59th legislative session. The days remaining are calculated from the first day of the month of each issue (in this case, August 1, 2003).

<u>Event</u>	<u>Days remaining</u>
Target date for completion of interim committee work (September 15, 2004)	412
General election (November 2, 2004)	460
59th Legislature convenes (January 3, 2005)	522

THE BACK PAGE

THE MONTANA ENVIRONMENTAL POLICY ACT: GUTTED OR STREAMLINED?

By Larry Mitchell, Resource Policy Analyst
Legislative Environmental Policy Office

INTRODUCTION

The Montana Environmental Policy Act, or MEPA, is a simple little law. It requires state agencies to conduct an environmental review of their proposed actions to ensure that environmental attributes are fully considered in decision making. Its purpose has been condensed into the commonly used phrase "look before you leap." Who can argue with a common sense idea like that? Nobody likes unintended consequences, especially if they have financial costs or result in public relations nightmares. An agency or business would certainly want to conduct a thorough financial analysis of a new project or investment before committing time and money to the venture. The bankruptcy courts are littered with businesses that didn't quite have the balance sheet balanced because of unanticipated costs or overly optimistic revenue estimates. Is it unreasonable to ask our state government to conduct an analysis of its decisions and identify what the environmental impacts of those decisions might be?

Apparently the Montana Legislature didn't think so in 1971 when, with only one dissenting vote, it enacted MEPA. This state policy action followed a nearly identical federal effort by Congress which enacted the National Environmental Policy Act (NEPA) during those heady environmental days of the Nixon administration in 1969. In the years since, both MEPA and NEPA have been argued and analyzed in the courts, studied and debated in countless forums, amended by legislative bodies, interpreted and reinterpreted through administrative rules and guidance, and praised and vilified from all quarters.

The debate centers on whether the environmental review requirements of MEPA result in unproductive governmental analysis paralysis that unnecessarily delays decisions, results in extra costs, and often eliminates a project under consideration simply by attrition. The legal requirements of MEPA also give special interests, on all sides of an issue, a cause of action to create more delay and cost by challenging agency environmental documents or the lack thereof in court. And then there's that other key ingredient of MEPA: public participation.

PUBLIC PARTICIPATION

State agencies are required to provide an opportunity for the public to participate in the decision making process when the decision may have significant impacts on the environment. Talk about delay and expense! Now we have public meetings, public comment periods, second guessing of agency methods and decisions and a raft of meddlesome issues to address. Can't we just trust government agencies to make the

right decision about permitting a mine or a landfill or, in the case of the federal government, imposing a roadless area rule in the forests or placing a moratorium on oil and gas drilling along the Rocky Mountain front?

My guess is no, but it's nothing personal against the agency experts. Montanans are insistent about being able to participate in government and governmental decisions. The right of public participation is contained in Article II (Declaration of Rights), section 8, of the Montana Constitution. Given that constitutional guarantee, the additional delay and expense that can result from providing for public participation in state environmental decisions may be unavoidable with or without the specific requirements of MEPA.

WITHER MEPA?

The 1999 Legislature asked the Environmental Quality Council to conduct an interim study of MEPA and its implementation by state agencies and to provide recommendations for improvement given concerns about the costs and benefits of the law, the timeliness of decisions, litigation delays and outcomes, and public participation. After an 18 month study, the EQC concluded that MEPA was generally functioning as intended. The EQC also concluded: that although state agencies were able to meet statutory deadlines for permit issuance, there was room for improvement in the timeliness of some complex decisions; that the public should be given more opportunity to participate; and that agencies generally made better and legally defensible decisions as a result of a MEPA analysis. The EQC proposed one minor change to MEPA legislation to the 2001 Legislature.

Despite the rather innocuous set of study conclusions, the 2001 legislative session saw the introduction and enactment of six MEPA bills, three of which were major policy changes in the way MEPA is implemented. These included declarations that MEPA may not be used to deny or condition a permit or project unless there is specific statutory authority to do so, or unless the project sponsor agrees to the condition; that environmental documents produced under MEPA must be completed within specific time limits; that legal action alleging a MEPA violation must be filed by a specific date; and that alternatives analyzed in a MEPA document must be technologically and economically feasible. The proponents characterized the 2001 legislation as a "streamlining" of the law, while the opponents described the efforts as a "gutting" of Montana's bedrock environmental act.

The debate over these changes played out on the front pages of the state's newspapers. Positions were taken and the legislation polarized citizens into the growth, jobs, and development camp versus the conservation, public interest, and environmental camp. The debate became partisan, and the rhetoric, at times, less than civil and barely defensible. Meanwhile, state agencies charged with implementing any MEPA changes silently hoped that their burden would not become heavier.

After two years, has MEPA been gutted or has it been streamlined? All things considered, MEPA implementation is bumbling along much the same as before. The

deadlines for completing environmental analyses were already in most of the permitting statutes. Strict deadlines did and still do cause agencies difficulties when a complex project, with multiple or significant environmental impacts, is proposed. This is particularly the case if the project is controversial or its location is especially sensitive and citizens insist on exercising their constitutional right to participate. The EQC study conducted during the 1999-00 interim also found that state agencies used MEPA to condition a permit or project in only five or six instances in the history of the act and that a permit has never been denied on the basis of its environmental impacts alone. Perhaps the only tangible difference has been that plaintiffs wishing to challenge a MEPA decision must now do so within 60 days of the final agency decision.

CHALLENGES TO MEPA

The use of MEPA as a means to delay, hinder, or prevent projects that could have positive job and revenue producing economic benefits to the state is one of the more common complaints, rightly or wrongly, against it. During the 2001-02 interim, the EQC tracked challenges to agency decisions that alleged MEPA violations. These cases typically claim that either the agency did not do an environmental analysis or that the agency analysis was inadequate. In nearly every case, the MEPA cause of action was only one of the causes listed in the complaint. Usually a complaint alleges violations of permitting laws or constitutional provisions and tosses in a MEPA violation for good measure.

All of the 12 cases tracked last interim involved the proposed issuance of a state permit. None involved state agency initiated actions such as state land timber sales or highway construction projects. Four cases were appeals to administrative agencies and the remaining eight were complaints that had been filed in District Court. In eight of the total cases, the MEPA issue was withdrawn, settled, or dismissed. Three cases are still pending, and in one case, the state agency was directed by the court to produce an environmental analysis of the project.

MEPA requires an analysis of the environmental impacts of governmental decisions and provides for public participation in the decision. Despite these seemingly benign objectives, the act has become a target for Montana's current economic woes.

ECONOMICS, THE ENVIRONMENT, AND MEPA

People often claim that we can have a good economy and a clean environment. A recent Montana Supreme Court decision stated that "the legislature enacted MEPA to prevent or eliminate environmental damage as well as protect the right to enjoy property free from undue governmental regulation."¹ According to William Reilly, former EPA administrator in the first Bush administration, polls over the past three decades have consistently shown lopsided majorities of over 80% in favor of keeping or strengthening

¹*Pompeys Pillar Historical Association v Montana Department of Environmental Quality, and United Harvest, LLC*, 2002 MT 352, 313 Mont. 401, 61P.3d 148 (2002).

clean air and water laws. But a Lee Newspaper poll reported in the Helena Independent Record (May 25, 2003) shows that 51% of Montana voters said that the state's environmental laws hurt the economy. The repeal of MEPA is part of one gubernatorial candidate's platform for the 2004 elections.

Other states with environmental review laws similar to MEPA include California, Hawaii, Minnesota, Massachusetts, Minnesota, New York, Washington, and Wisconsin. A comparison of those states' economic position and per capita income, the strength of their environmental laws and regulatory agencies, and the number and aggressiveness of their conservation groups with that of Montana would be an interesting study.

From an economic development perspective, five permits have been granted for the construction of electrical generating plants in Great Falls, Butte, Hardin, and Roundup. The copper mine in Butte has a mine permit as did the proposed but now formally abandoned Noranda copper mine near Libby. However, none of these permitted facilities are operating, and most haven't been constructed for a variety of reasons, most of which have little or nothing to do with the potential environmental impacts of the projects. With the exception of the Roundup project, which is the subject of a court challenge, the environmental analysis and the public participation process for each project is complete. It's the economic analysis, the balance sheet of the project, that is keeping the development of these projects at bay. In another case, a proposal to incinerate waste tires as a supplemental fuel source for a cement kiln has undergone a MEPA review. A substantial environmental assessment document has been prepared. As the result of public review and input, the state is being requested by area citizens and politicians of all stripes to prepare a more thorough (and more expensive and time consuming) environmental impact statement because of additional concerns.

SQUARING MEPA POLICY AND IMPLEMENTATION

The environmental review and public participation requirements of MEPA have been applied in a variety of circumstances and for a variety of motives. The legislature has established specific policies under MEPA that require, for example, a state agency to prepare an environmental impact statement before waters of the state may be petitioned for classification as "outstanding resource waters." An environmental impact statement is also required if a governing body proposes to grant a variance from its lakeshore protection regulations, if the state intends to lease more than a certain quantity of water each year, and for all weather modification activity applications. In the federal arena, a federal judge has recently ruled that the forest service violated NEPA when it adopted the roadless rule that banned road building on 58.5 million acres of federal forest lands. And the oil and gas industry cited NEPA in an unsuccessful challenge to the oil and gas drilling ban on federal lands along the Rocky Mountain front.

Even after the 2001 legislative changes, it is still a fundamental principle of MEPA that the government take a hard look at the environmental impacts of its decisions and to solicit public participation in the tough or significant cases before making a decision. The purpose and policy portion of the Montana Environmental Policy Act (Title 75, chapter

1, part 1) remains virtually unchanged since enactment: "to use all practicable means and measures...to create and maintain conditions under which humans and nature can coexist in productive harmony, to recognize the right to use and enjoy private property free of undue government regulation, and to fulfill the social, economic, and other requirements of present and future generations of Montanans." On the other hand, the legislature has amended Title 75, chapter 1, part 2, of the act in almost every session since 1971. That's the part of MEPA that describes how we intend to implement the policy statement in part 1 through the preparation of environmental review documents. MEPA will no doubt be further "streamlined" or "gutted" or "strengthened" in the future as the public policy debate continues over Montana's economic, social, and natural environments or as MEPA collectively calls it, the "human environment." One thing is certain. Montanans will always find a way to hold its government accountable for decisions that impact their "human environment" and insist on participating in the process. The Montana Constitution guarantees it.



INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED,
ALL ROOM DESIGNATIONS ARE IN THE CAPITOL BLDG.

AUGUST

August 5, Law and Justice Committee, Capitol Building, Room 102, 9:30 a.m.

August 21, Education and Local Government Committee, Capitol Building, Room 137, 9:30 a.m.

August 22, Children, Families, Health, and Human Services Committee, Capitol Building, Room 102, 8 a.m.

August 27, State-Tribal Relations Committee, Capitol Building, Room 137, 9:15 a.m.

SEPTEMBER

September 1, Labor Day

September 12, Tax Reform Study Committee (Department of Revenue), MACO conference room, 8:30 a.m.

September 16, Energy and Telecommunications Committee, Capitol Building, Room 102

September 17, Public Service Commission, Natural Gas Forum, Great Northern Hotel, 9 a.m.

September 22, Legislative Council, SJR 32 Subcommittee on Liability Insurance for Health Care Facilities and Providers

September 22-23, Legislative Council

September 23-24, SB 304 State Fund Study Committee

September 26, State Administration and Veterans' Affairs Committee

